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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/426,063	10/22/1999	GREGORY J. MESAROS	GEDP106US	1360
23623	7590	10/20/2004	EXAMINER	
AMIN & TUROCY, LLP 1900 EAST 9TH STREET, NATIONAL CITY CENTER 24TH FLOOR, CLEVELAND, OH 44114			RUDY, ANDREW J	
			ART UNIT	PAPER NUMBER
			3627	

DATE MAILED: 10/20/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

<b>Application No.</b> 09/426,063  <b>Examiner</b> Andrew Joseph Rudy	<b>Applicant(s)</b> MESAROS	
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**-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --**  
**Period for Reply**

**A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.**

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### **Status**

1) Responsive to communication(s) filed on 02 August 2004.

2a) This action is FINAL.                    2b) This action is non-final.

3) Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### **Disposition of Claims**

4) Claim(s) 1-8 and 39-50 is/are pending in the application.

4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.

5) Claim(s) \_\_\_\_\_ is/are allowed.

6) Claim(s) 1-8 and 39-50 is/are rejected.

7) Claim(s) \_\_\_\_\_ is/are objected to.

8) Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### **Application Papers**

9) The specification is objected to by the Examiner.

10) The drawing(s) filed on \_\_\_\_\_ is/are: a) accepted or b) objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11) The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

### **Priority under 35 U.S.C. § 119**

12) Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a) All    b) Some \* c) None of:

1. Certified copies of the priority documents have been received.

2. Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.

3. Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

### **Attachment(s)**

1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892) 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.	4) <input type="checkbox"/> Interview Summary (PTO-413) Paper No(s)/Mail Date _____. 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152) 6) <input type="checkbox"/> Other: _____.
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## **DETAILED ACTION**

1. Claims 1-8 and 39-50 are pending. Applicant cancelled claims 9-38. The previous rejection is withdrawn pursuant to Applicant's amendment/remarks received August 2, 2004.

### ***Claim Rejections - 35 USC § 101***

2. Claims 1-8, 39 and 47-50 are rejected under 35 U.S.C. 101 because the claimed invention is directed to non-statutory subject matter.

The basis of this rejection is set forth in a two-prong test of:

- (1) whether the invention is within the technological arts; and
- (2) whether the invention produces a useful, concrete, and tangible result.

For a claimed invention to be statutory, the claimed invention must be within the technological arts. Mere ideas in the abstract (i.e., abstract idea, law of nature, natural phenomena) that do not apply, involve, use, or advance the technological arts fail to promote the "progress of science and the useful arts" (i.e., the physical sciences as opposed to social sciences, for example) and therefore are found to be non-statutory subject matter. For a process claim, the recited process must somehow apply, involve, use, or advance the technological arts.

In the present case, claims 1-8, 39 and 47-50 only recite an abstract idea. The recited steps offering, inputting, correlating and outputting, does not apply, involve, use, or advance the technological arts since all of the recited steps can be performed in the mind of the user or by use of a pencil and paper.

The computer implemented methodology/method occurs in the preamble and does not give necessary life meaning and vitality to the claim. *Catalina Marketing v. Coolsavings*, 289 F.3d 801, 808; 62 USPQ2d 1781, 1785 (Fed. Cir. 2002). These steps only constitute an idea of how to transact business over a medium, e.g. paper.

***Claim Rejections - 35 USC § 112***

3. The following is a quotation of the second paragraph of 35 U.S.C. 112:

The specification shall conclude with one or more claims particularly pointing out and distinctly claiming the subject matter which the applicant regards as his invention.

4. Claims 1-8 and 39-50 are rejected under 35 U.S.C. 112, second paragraph, as being indefinite for failing to particularly point out and distinctly claim the subject matter which applicant regards as the invention.

Claim 8, lines 6-7, the phrase “at least one distribution attribute” is not clear. No support for such language can be found in the descriptive portion of the specification, e.g. page 8, lines 8+.

Claim 39, lines 2-3, are not clear. No support for such is evident from the descriptive portion of the specification in juxtaposition with the drawing figures.

Claim 40, lines 8-9, the phrase “at least one distribution attribute” is not clear. No support for such language can be found in the descriptive portion of the specification, e.g. page 8, lines 8+.

Claim 47, line 3, the phrase “via network” is not clearly written. Correction is required.

Claim 47, lines 7-8, the phrase “at least one distribution attribute” is not clear. No support for such language can be found in the descriptive portion of the specification, e.g. page 8, lines 8+.

Claim 50, line 6, the phrase “at least one distribution attribute” is not clear. No support for such language can be found in the descriptive portion of the specification, e.g. page 8, lines 8+.

***Claim Rejections - 35 USC § 103***

5. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

6. Claims 1-8 and 39-50, as understood, are rejected under 35 U.S.C. 103(a) as being unpatentable over Libman, US 5,987,434.

Libman discloses price and non-price criteria, e.g. claims 66, 68, 145, 146, implemented by a computer system for offering a plurality of deals for at least one product and service, e.g. financial product/service. The deals are deemed correlated in broad scope and content. Libman does not explicitly disclose the term at least one distribution attribute. However, the buyer and seller criteria analyzed, e.g. cols. 9-20, may be viewed as distribution attributes. Nonetheless, to have provided distribution attributes would have been obvious to one of ordinary skill in the art.

The motivation for providing such would have been to capitalize upon common knowledge seller reputation, reliability, timeliness, delivery options, financing options and warranty information in order to increase sales for increased profits.

***Conclusion***

7. Any inquiry concerning this communication or earlier communications from the examiner should be directed to Andrew Joseph Rudy whose telephone number is 703-308-7808. The examiner can normally be reached on Tuesday thru Friday, 7:30 a.m until 6 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mr. Robert Olszewski can be reached on (703) 308-5183. The fax phone number for the organization where this application or proceeding is assigned is 703-872-9306.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free).

A handwritten signature in black ink, appearing to read "Andrew Joseph Rudy".